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NOTE: CHANGES HAVE BEEN
MADE TO THIS DOCUMENT

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 OMAR RODRIGUEZ,

21 Plaintiff,

22 v.

23 CITY OF BURBANK, TIM STEHR,
SCOTT LACHASSE, and DOES 1
through 10, inclusive,

24 Defendants.
25

CASE NO. CV 11-03045 GW (RZx)

Judge: Hon. George H. Wu
Location: Courtroom 10

[PROPOSED] PROTECTIVE ORDER

[Fed.R.Civ.P. 26(c); L.R. 7-1]

[Discovery Document: Referred to
Magistrate Judge Ralph Zarefsky]

Action Filed: April 11, 2011
Trial Date: October 2, 2012

PROTECTIVE ORDER

1
2
3 1. Any party to this action may designate as “confidential” any
4 documents, things, discovery responses, trial or deposition testimony, or other
5 material that contains or discloses any of the following:

6 a. Police officer personnel information or police officer personnel
7 records; or

8 b. Plaintiff Omar Rodriguez’s (“Plaintiff’s”) social security
9 number, home address, telephone number, private financial information,
10 including but not limited to, his pay stubs, wage statements, tax returns,
11 benefits documents, retirement programs, and/or bank account information,
12 or Plaintiff’s medical information including but not limited to his, medical
13 records, bills, treatment, and/or medical history.

14 The term “Confidential Information” as used in this Protective Order shall
15 refer to the original and copies of any so-designated document, testimony, or other
16 discovery material, and shall also refer to the information contained in such
17 material. All notes, extracts and summaries of such Confidential Information shall
18 be considered confidential and be subject to the terms of this Protective Order.

19 The parties shall mark any documents produced that constitute or contain
20 Confidential Information with a label designating them as “Confidential: Subject
21 to Protective Order.”
22

23 **GOOD CAUSE STATEMENT:** Good cause exists to treat police officer
24 personnel information and records as “Confidential Information” in this matter in
25 the manner described herein. Such items include information about complaints,
26 investigations, and discipline involving the officers; officers’ financial information;
27 details relating to the officers’ private lives, including contact information; and
28

1 birth dates and social security numbers. Police officers' jobs require that they
 2 frequently testify under oath, and unlimited dissemination of such sensitive
 3 information would undermine their ability to effectively testify in legal
 4 proceedings.¹ Importantly, given the unique nature of police officers' jobs,
 5 unlimited disclosure of contact information and other personal information in
 6 personnel records can also compromise the safety of the officers and their families.

7 Good cause also exists to treat Plaintiff's social security number, home
 8 address, telephone number, private financial information, and medical information
 9 as Confidential Information in this matter in the manner described herein. Plaintiff
 10 maintains a reasonable and legitimate interest in safeguarding the privacy of his
 11 social security number, financial information, and medical conditions, treatment,
 12 and history. Plaintiff would sustain significant damages if this private information
 13 was publicly disclosed or available for review.²

14 2. Absent a specific order of this Court, the parties shall use the
 15 Confidential Information solely for the purposes of litigation in this action—*Omar*
 16 *Rodriguez v. City of Burbank, et al.*, United States District Court, Central District,
 17 Case No. 11-CV-03045-GW-RZ(X) (the "Action")—and shall not disclose any

18 ¹ Indeed, for this reason, California law provides special protection for police
 19 officer personnel files and provides that they can only be obtained through specific
 20 procedures set out in the California Evidence Code, which include notice to the
 21 affected officer(s) and an affidavit showing a specific factual scenario establishing
 22 the materiality of the confidential information to the case at hand. *See, e.g., Abatti*
 23 *v. Superior Court*, 112 Cal. App. 4th 39, 49 (2003), *City of Santa Cruz v.*
 24 *Municipal Court*, 49 Cal. 3d 74, 81 (1989), *Davis v. City of Sacramento*, 24 Cal.
 25 App. 4th 393, 401 n. 2 (1994), *California Highway Patrol v. Superior Court*, 84
 26 Cal. App. 4th 1010, 1019-1020 (2000).

27 ² California law protects the private nature of Plaintiff's anticipated
 28 "Confidential" documents. *See, e.g., Webb v. Standard Oil Co.*, 49 Cal.2d 509,
 513-514 (protecting tax returns); *Cobb v. Superior Court*, 99 Cal.App.3d 543, 550
 (1979) (recognizing a right of privacy exists as to a person's financial affairs); and
John B. v. Superior Court (2006) 38 Cal.4th 1177, 1198 (constitutional right of
 privacy applies to medical records).

1 portion of the Confidential Information to any other person, firm or corporation
2 except:

3 a. Counsel of record in this action, and bona fide employees of
4 that counsel's offices, and then only to the extent necessary to enable said persons
5 to assist in litigation of this Action;

6 b. Plaintiff, to the extent necessary for the prosecution of this
7 Action;

8 c. Non-party experts or other consultants who are not affiliated
9 with a party and who are expressly engaged by counsel to provide expert testimony
10 in this matter or to assist in discovery and/or preparation of this action for trial,
11 with disclosure only to the extent necessary to perform such work;

12 d. Potential witnesses whom counsel of record may deem
13 necessary or appropriate to interview and/or depose in this action, but only to the
14 extent necessary for purposes of this litigation;

15 e. Court reporters and videographers, to the extent necessary to
16 take or transcribe testimony in this Action;

17 f. Such other persons as may be designated by written stipulation
18 of the parties or by further order of the Court; and

19 g. The Court, to the extent necessary for a motion or other matter
20 pending before the Court in this Action.

21 At no time and under no circumstances may Confidential Information be
22 provided to any person not listed in section 2, subdivisions (a) through (g). At no
23 time and under no circumstances may Confidential Information be disclosed to
24 counsel, agents or representatives for any party to litigation with the City of
25 Burbank (other than Plaintiff). This provision does not prevent Plaintiff from
26 showing Confidential Information to potential witnesses – as opposed to their
27 attorneys, agents, and representatives – under section 2(d) above.
28

1 Nothing in this Protective Order shall prevent any party from disclosing its
2 own Confidential Information as it deems appropriate. Such disclosure shall not
3 constitute a waiver of the designation of such Confidential Information as
4 confidential.

5 3. The parties' counsel alone will retain the Confidential
6 Information. At no time may a copy of any of the Confidential Information be
7 made for or provided to the persons described in section 2, subdivisions (a)
8 through (g) above except as follows:

9 a. Burbank will make three numbered copies of any material it
10 designates as Confidential Information. One of the copies will be for Plaintiff's
11 counsel, Brown White & Newhouse LLP. The remaining two copies may be
12 provided by Plaintiff's counsel to the custody of two pre-identified, bona fide
13 experts while the case is pending before the trial court. Plaintiff's counsel will not
14 make any copies of the Confidential Information provided by Burbank unless such
15 copies are agreed to by the parties or ordered by the Court.

16 b. Plaintiff will make five numbered copies of any material he
17 designates as Confidential Information. One of the copies will be for Burbank's
18 counsel, Mitchell Silberberg & Knupp LLP; one of the copies will be for
19 Burbank's counsel Burke, Williams & Sorenson, LLP; and one of the copies will
20 be for Burbank's counsel, Senior Assistant City Attorney Carol Humiston. The
21 remaining two copies may be provided by Burbank's counsel to the custody of two
22 pre-identified, bona fide experts while the case is pending before the trial court.
23 Burbank's counsel will not make any copies of the Confidential Information
24 provided by Plaintiff unless such copies are agreed to by the parties or ordered by
25 the Court.

1 c. Copies of Confidential Information provided to court reporters,
2 videographers and/or the Court pursuant to section 2, subdivisions (e) or (g) above
3 shall be governed by and handled in accordance with sections 6 and 7 below.

4 The parties may mark any copies of their own Confidential
5 Information with a watermark identifying such copies as Confidential Information
6 before providing those copies to opposing counsel.

7 4. All persons described in section 2, subdivisions (a) through (g) and
8 section 3 above shall not disclose or provide any portion of the Confidential
9 Information to any other person and shall not use any information obtained
10 therefrom except in conformance with this Protective Order and for purposes of
11 litigation in this Action. Any party who discloses or provides Confidential
12 Information to any person described in section 2, subdivisions (b), (c), (d), (e), or
13 (f) shall advise such person that said matters constitute Confidential Information
14 which may be used only for the litigation of this Action, and shall, prior to
15 disclosure of the Confidential Information, have such person execute a written
16 Understanding and Agreement to be bound by this Protective Order in the form
17 attached hereto as Exhibit 1. Parties to this Action shall provide copies of executed
18 Understanding and Agreement forms to the opposing party at the following times:
19 (a) at the time of deposition for each witness who is deposed, and each court
20 reporter and videographer thereat; (b) at the designated time of exchange of expert
21 witnesses for all others executed prior to that time; and (c) within five (5) days of
22 execution for any Understanding and Agreement executed after the date in section
23 4, subdivision (b).

24 5. In the event of any disclosure or use of Confidential Information other
25 than in the manner authorized by this Protective Order (or subsequent Court order),
26 counsel for the party responsible for the disclosure or use shall immediately notify
27 counsel of the party who designated the material of the facts and circumstances of
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1 such disclosure or use, including the identity of the unauthorized recipient(s) and
2 the specific material disclosed to such person, and shall make every effort to
3 prevent further unauthorized disclosure or use by, among other things, retrieving
4 all such disclosed material and copies of such material.

5 6. Testimony given at a deposition and exhibits used at a deposition may
6 be designated as Confidential Information by an appropriate statement on the
7 record at the time of the giving of such testimony or use of such exhibit, or within
8 ten (10) days after receipt of the transcript by the counsel for the party whose
9 Confidential Information was disclosed at the deposition. Counsel may designate
10 the transcript, or portions of the transcript, as Confidential Information either
11 during the deposition or during the ten (10) day review period by written
12 notification to opposing counsel. Until expiration of the ten (10) day review
13 period, the entire transcript, including exhibits, shall be deemed Confidential
14 Information. If there is no statement on the record designating the transcript or any
15 portion of the transcript as Confidential Information, and if no such designation is
16 made prior to expiration of the ten (10) day review period, the transcript shall not
17 be considered Confidential Information. Any deposition testimony that
18 encompasses or concerns Confidential Information shall be transcribed in a
19 separate booklet that is marked on its cover "Confidential: Subject to Protective
20 Order." Any document that contains Confidential Information that is marked as an
21 exhibit at a deposition shall be bound in the separate booklet marked
22 "Confidential: Subject to Protective Order." Deposition transcripts containing
23 Confidential Information and bearing this marking shall not be disclosed except as
24 provided in section 2 above.

25 7. Any documents containing Confidential Information that are
26 submitted to the Court shall be accompanied by an application, pursuant to Local
27 Rule 79-5.1, to file the papers (or the confidential portion thereof) under seal.
28

1 Pending the ruling on the application, the papers subject to the sealing application
2 shall be lodged under seal.

3 8. If any party objects to the designation of any materials as Confidential
4 Information, that party shall state the objection by letter to counsel for the party
5 making the designation. Each party shall have the right, on reasonable notice, and
6 after meeting and conferring with the designating party in a good faith effort to
7 resolve the matter informally, to apply to the Court for a determination of the issue.
8 Until the Court rules on the motion, the materials shall continue to be treated and
9 designated as Confidential Information.

10 9. Production of the Confidential Information protected by this
11 Protective Order shall not constitute a waiver of any privilege or confidentiality or
12 privacy right. The parties retain the right to assert all substantive objections to the
13 Confidential Information, including but not limited to relevancy, hearsay, privacy,
14 and privilege.

15 10. Within thirty (30) days of the conclusion of this Action, counsel for
16 the parties shall either secure the return of all copies, prints, extracts, summaries,
17 and other reproductions of all Confidential Information from all persons to whom
18 the Confidential Information was disclosed, and shall return such materials to the
19 disclosing party's counsel of record, or destroy such materials and certify the
20 destruction of the same.

21 11. The confidentiality obligations imposed by this Order shall remain in
22 effect until the party who designated the material as confidential agrees otherwise
23 in writing or a court order otherwise directs.

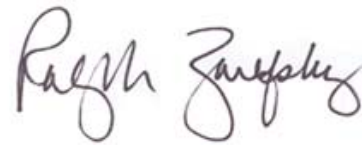
24 12. Nothing in this Protective Order shall be deemed to limit, prejudice,
25 or waive any right of any party or person: (a) to resist or compel discovery with
26 respect to, or to seek to obtain additional or different protection for, material
27 claimed to be protected work product or privileged under federal law, material as
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1 to which the producing party claims a legal obligation not to disclose, or material
2 not required to be provided pursuant to federal law; (b) to seek to modify or obtain
3 relief from any aspect of this Protective Order; (c) to object to the use, relevance or
4 admissibility at trial or otherwise of any material, whether or not designated in
5 whole or in part as Confidential Information governed by this Protective Order; or
6 (d) otherwise to require that discovery be conducted according to governing laws
7 and rules.

8 13. This Order shall survive the termination of this litigation and the
9 Action, and the parties agree that after this Action is terminated this Court shall
10 have and retain jurisdiction over them for the purpose of enforcing this Protective
11 Order.

12
13 IT IS HEREBY ORDERED. However, this order shall not govern in connection
14 with dispositive motions or at trial, where different standards for protection may
15 govern. *See Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1136
16 (9th Cir. 2003); *Kamakana v. City and Couty of Honolulu*, 447 F.3d 1172 (9th Cir.
17 2006). In connection with those proceedings, any party seeking protection should
18 file a separate application to the judicial officer who will preside at those
19 proceedings.

20
21 Dated: June 29, 2012



22 Honorable Ralph Zarefsky
23 United States Magistrate Judge
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1 **Exhibit 1**

2 **UNDERSTANDING AND AGREEMENT TO BE BOUND BY**
 3 **PROTECTIVE ORDER**

4

5 I, _____, have read the STIPULATED

6 PROTECTIVE ORDER (the "Protective Order") in *Omar Rodriguez v. City of*

7 *Burbank, et al.*, United States District Court, Central District of California, Case

8 No. CV-11-03045-GW-RZx. I understand and agree to comply with the terms of

9 the Protective Order in all respects, and hereby submit and waive any objection to

10 the jurisdiction of the United States District Court for the Central District of

11 California for purposes of resolving any dispute concerning or related to my

12 compliance with the Protective Order.

13

14 I understand that any violation of the terms of this Protective Order may be

15 punishable by money damages, interim or final injunctive or other equitable relief,

16 an imposition of sanctions, contempt of court, or other additional relief as deemed

17 appropriate by the Court.

18

19 Date: _____

20

21 Signature: _____

22

23 Printed Name: _____

24

25 Address: _____

26

27 _____